

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

VIET GRAGG,

Plaintiff,

v.

**5:03-CV-904
(NPM/DEP)**

**INTERNATIONAL MANAGEMENT
GROUP (UK), INC.; IMG WORLDWIDE, INC.;
INTERNATIONAL MANAGEMENT
GROUP (OVERSEAS), INC.; and BRAND DNA,**

Defendants.

APPEARANCES

OF COUNSEL

BOIES, SCHILLER & FLEXNER LLP

10 North Pearl Street, 4th Floor
Albany, New York 12207
Attorneys for Plaintiff

GEORGE F. CARPINELLO, ESQ.

OFFICE OF ROBERT C. KILMER

122 State Street, Suite 220
P.O. Box 2546
Binghamton, New York 13902
Attorneys for Plaintiff

ROBERT C. KILMER, ESQ.

ULMER & BERNE LLP

Skylight Office Tower
1660 West 2nd Street
Suite 1100
Cleveland, Ohio 44113-1448
Attorneys for Defendants

**JOSEPH A. CASTRODALE, ESQ.
RICHIK SARKAR, ESQ.**

**MENTER RUDIN &
TRIVELPIECE, P.C.**

500 South Salina Street
Suite 500
Syracuse, New York 13202
Attorneys for Defendants

**MITCHELL J. KATZ, ESQ.
FRANCES GRIMALDI, ESQ.**

SCULLIN, Chief Judge

ORDER

In a letter faxed to Judge McCurn, dated February 16, 2006, Plaintiff's counsel, Boies, Schiller & Flexner LLP ("Boies Schiller") informed the Court that it "intend[ed] to make a motion to withdraw from this matter [and that] [b]ecause [its] motion [would] of necessity, discuss the merits of the litigation, [it] respectfully request[ed] that the motion be submitted *ex parte* and under seal." *See* Boies Schiller's Letter, dated February 16, 2006, at 1. "Furthermore, Boies Schiller "request[ed] that the matter be referred to [a Judge or Magistrate Judge, other than Judge McCurn and Magistrate Judge Peebles, to whom this case is assigned] for determination." *See id.*¹ Finally, Boies Schiller requested that the letter itself remain *ex parte* and filed under seal. *See id.* at 2.

In response to Boies Schiller's letter, Mr. Kilmer, Plaintiff's other counsel, faxed a letter with attachments, dated February 17, 2006, to Judge McCurn. In his letter, Mr. Kilmer stated that Plaintiff had instructed him "to request an immediate stay of the proceedings in this matter, including Plaintiff's deposition which [was] scheduled to begin on Monday, February 20, 2006." *See* Kilmer's Letter, dated February 17, 2006, at 1. Mr. Kilmer also requested "a conference to resolve the issues pertaining to the withdrawal motion referred to in the Boies Firm's letter to the Court that was submitted [on February 16, 2006]." *See id.*

As a preliminary matter, the Court notes that neither Boies Schiller nor Mr. Kilmer served their letters on Defendants' counsel. Having reviewed the arguments contained in both letters

¹ Since Judge McCurn referred Boies Schiller's motion to withdraw to Chief Judge Scullin, this request is moot.

and the attachments to Mr. Kilmer's letter, the Court hereby

ORDERS that Boies Schiller's request that its February 16, 2006 letter to Judge McCurn remain *ex parte* and under seal is **DENIED**; and the Court further

ORDERS that, on or before **March 9, 2006**, Boies Schiller electronically file a copy of its February 16, 2006 letter to Judge McCurn; and the Court further

ORDERS that the Clerk of the Court file Mr. Kilmer's February 17, 2006 letter and the attachments thereto **under seal**; and the Court further

ORDERS that, on or before **March 24, 2006**, Boies Schiller electronically file its Notice of Motion to Withdraw; and the Court further

ORDERS that, on or before **March 24, 2006**, Boies Schiller file its papers in support of its motion to withdraw **under seal** for *in camera* review, together with a cover letter stating that it is filing these papers under seal pursuant to this Order, and serve a copy of these papers on co-counsel and Plaintiff **but not on opposing counsel**; and the Court further

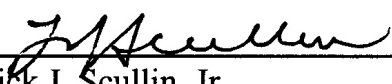
ORDERS that, on or before **April 7, 2006**, Defendants electronically file their papers in opposition to Boies Schiller's motion to withdraw; and the Court further

ORDERS that, on or before **April 7, 2006**, Plaintiff file his papers in opposition to Boies Schiller's motion to withdraw **under seal** for *in camera* review, together with a cover letter stating that he is filing these papers under seal pursuant to this Order, and serve these papers on Boies Schiller **but not on opposing counsel**; and the Court further

ORDERS that the return date of Boies Schiller's motion to withdraw is **April 14, 2006**; and the Court will resolve the motion based upon the papers submitted and without oral argument.

IT IS SO ORDERED.

Dated: March 7, 2006
Syracuse, New York



Frederick J. Scullin, Jr.
Chief United States District Court Judge